IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

UNITED STATES OF AMERICA,	§	
	§	
v.	§	**MO:19-CR-00086-DC**
	§	
(1) ANDRES KEYON ROMAN,	§	
Defendant.	§	

MEMORANDUM OPINION AND
ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

BEFORE THE COURT is Defendant Andres Keyon Roman's Motion to Suppress filed on June 5, 2019. (Doc. 26). After due consideration of the relevant pleadings, the parties' arguments, the record, and the applicable law, the Court **DENIES** Defendant's Motion to Suppress. *Id.*

I. PROCEDURAL BACKGROUND

This case stems from the seizure of at least five grams of actual methamphetamine from the Defendant on April 9, 2019. (Doc. 1). Defendant was stopped and arrested by officers from the Ector County Sheriff's Office (ECSO) Special Investigations Unit (SIU) and the Drug Enforcement Agency (DEA) after they observed the Defendant engage in a narcotics transaction and pursuant to an active arrest warrant. *Id.* On April 24, 2019, a federal grand jury returned an indictment charging the Defendant with one count of possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(B). (Doc. 15). Defendant filed the instant Motion arguing that the officers did not have probable cause to stop and search his vehicle. (Doc. 26). A suppression hearing and stipulated bench trial were held jointly on June 21, 2019. (Doc. 36). Ruling from the bench, the Court denied Defendant's Motion to Suppress

(Doc. 26) and found the Defendant guilty on Count One of the Indictment. This Memorandum Opinion and Order Denying Defendant's Motion to Suppress expands on the Court's ruling.

II. FACTUAL BACKGROUND

On April 9, 2019, ECSO SIU Sergeant Abel Sanchez (Sergeant Sanchez) obtained information from a confidential informant (CI) that Defendant was distributing methamphetamine in Odessa, Texas. (Doc. 31). After gathering information on Defendant, Sergeant Sanchez became aware of an active warrant for the Defendant's arrest issued on December 14, 2018 by United States Magistrate Judge Ronald C. Griffin. On the same date, April 9, 2019, and based on the information supplied by the CI, ECSO SIU officers and DEA special agents engineered and executed a controlled purchase of approximately 7 grams of methamphetamine (one-quarter ounce) for $220.00 from the Defendant.

Law enforcement witnessed and confirmed the completed narcotics transaction between the CI and Defendant before stopping Defendant's vehicle at a convenience store's drive-thru land just minutes later. Specifically, law enforcement officers searched the CI prior to the controlled purchase to ensure he did not have money or narcotics on his person. The officers then observed as the CI purchased 7 grams of methamphetamine from the Defendant at a car wash with $220.00 "buy money" supplied by the officers. Moreover, the officers maintained continuous surveillance of Defendant after the narcotics transaction took place, following him from the car wash to the convenience store's drive-thru. Once officers confirmed the transaction by meeting with the CI to recover the methamphetamine purchased, they blocked Defendant's vehicle in the drive-thru lane and arrested both occupants. The officers subsequently searched the vehicle and found approximately 23 grams of methamphetamine. The officers found another 14

grams of methamphetamine on co-defendant Rosanne Maria Isham's person. Thus, in total, the controlled purchase and search yielded about 44 grams of actual methamphetamine.

The sole question before the Court at the joint motion to suppress hearing and bench trial was the legality of the search of the vehicle operated by Defendant at the time of the arrest.[1]

In the instant Motion, Defendant argues the stop and search of his vehicle were conducted without probable cause because although Defendant was a wanted federal fugitive by US Probation in Midland, Texas, the officers did not know Defendant had an active warrant before the stop. (Doc. 26).

The Government counters that Defendant's arrest was pursuant to an arrest warrant and officers conducted a lawful inventory of his vehicle prior to impounding it. (Doc. 31). It further argues that law enforcement officers had probable cause to search the vehicle and to arrest the Defendant and search the vehicle incident to his arrest. *Id.*

III. LEGAL STANDARD

The Fourth Amendment to the Constitution of the United States provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"The bulwark of Fourth Amendment protection, of course, is the Warrant Clause, requiring that, absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search." *Franks v. Delaware*, 438 U.S. 154, 164 (1978). "In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the

1. In the only exhibit introduced at the hearing, the parties entered a stipulation that the sole dispute is the legality of the search of the Defendant's vehicle. (Government's Ex. 1). However, Defendant's Motion also challenges the legality of the stop. Accordingly, the Court will address both issues.

warrant requirement." *Riley v. California*, 134 S. Ct. 2473, 2482 (2014). The movant bears the burdens of production and persuasion in a suppression hearing. *United States v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1977); *United States v. Hidalgo*, 385 Fed. App'x 372, 375 (5th Cir. 2010). However, "[w]hen the government searches or seizes a defendant without a warrant, the government bears the burden of proving, by a preponderance of the evidence, that the search or seizure was constitutional." *United States v. Guerrero-Barajas*, 240 F.3d 428, 432 (5th Cir. 2001). "The Fourth Amendment exclusionary rule operates to suppress only evidence derived from a Fourth Amendment violation." *United States v. Scroggins*, 599 F.3d 433, 446 (5th Cir. 2010). Evidence obtained as a direct result of an unconstitutional search or seizure is plainly subject to exclusion as is evidence later discovered and found to be derivative of any illegality or fruit of the poisonous tree. *Segura v. United States*, 468 U.S. 796, 804 (1984).

IV. DISCUSSION

The Defendant challenges the stop, search, and seizure of his vehicle, a gray Dodge pick-up truck. (Doc. 26 at 2). The Court finds that the stop, impound, and inventory of the vehicle were reasonable. However, even if the impound and inventory were unreasonable, the search based on probable cause and incident to the Defendant's arrest was lawful. Accordingly, the stop and search were not unconstitutional under the Fourth Amendment, and the Court **DENIES** Defendant's Motion to Suppress the evidence discovered in his vehicle and the statements he made.

A. The Stop

Defendant first challenges the stop of his vehicle, arguing that the Government was not aware at the time of the stop that Defendant was wanted under a federal supervision warrant, nor had the Government connected the gray Dodge pick-up Defendant was driving at the time of the

stop to the warrant. (Doc. 26-1 at 2). It is settled law, that "[p]olice may stop a vehicle where they are aware of specific articulable facts, together with rational inferences from those facts, that support a reasonable suspicion of illegal activity." *Burton v. United States*, 237 F.3d 490, 496 (5th Cir. 2000).

The officers stopped the Dodge pick-up because they had reasonable suspicion that drug trafficking was taking place based on information provided by the CI and the subsequent controlled purchase executed and observed by them. (Doc. 31 at 1–2). Moreover, at the hearing Sergeant Sanchez testified that he was aware, before stopping the vehicle and arresting Defendant, that there was a warrant out for Defendant's arrest and that Defendant was operating the Dodge pick-up. The Court opines this information is sufficient to satisfy the reasonable suspicion standard for a stop. *See, e.g.*, *Burton*, 237 F.3d at 496 (affirming a stop was supported by probable cause because the officers knew that the defendant was driving without a valid driver's license "in an area known to be a locus of drug transactions"); *see also United States v. Henderson*, No. 4:18-CR-90-ALM-KPJ, 2018 WL 6050611, at *3 (E.D. Tex. Oct. 26, 2018), *report and recommendation adopted*, No. 4:18-CR-90, 2018 WL 6046180 (E.D. Tex. Nov. 19, 2018) ("Officers may stop vehicles to execute a warrant when the officer has reasonable suspicion that an individual in a vehicle is the subject of a felony arrest warrant." (citations omitted)).

The Court also finds Defendant's argument—that the officers had not connected the gray Dodge pick-up to Defendant—unpersuasive. (Doc. 26). At the hearing, the Defense emphasized that the officers believed the vehicle was black when they observed the narcotics transaction when, in reality, it was gray. He also highlighted that Sergeant Sanchez did not personally observe the narcotics transaction take place and thus did not know that Defendant was in the gray

Dodge pick-up when he stopped and arrested Defendant. However, it was also established that the officers observed the CI set up a controlled purchase with Defendant over the phone; and, that the officers witnessed when Defendant arrived at the location the transaction was scheduled to take place in what appeared to be a dark Dodge pick-up, when the CI and Defendant executed the narcotics transaction, and when Defendant took off in the direction of the convenience store. This information was shared amongst the officers working on the operation on April 9, 2019. Additionally, the officers surveilled the vehicle in which Defendant arrived at the car wash until it was stopped at the convenience store, approximately five minutes after the controlled purchase. Consequently, the Court believes the officers had reason to believe Defendant was operating the vehicle they surveilled and subsequently stopped in connection with the controlled purchase and the active arrest warrant.

B. The Search

Defendant next argues that the search of his vehicle was unreasonable for the same reason as the stop, that the officers were not aware of the warrant nor had they made a connection between the warrant and Dodge pick-up driven by Defendant. (Doc. 26-1 at 2). The Government maintains the search was lawful (1) as an inventory prior to impounding; (2) because there was probable cause to search the Dodge pick-up; and (3) because the search was incident to an arrest. (*See generally* Doc. 31).

1. *Inventory Prior to Impounding*

According to the Government, the inventory exception applies because law enforcement arrested both occupants of the vehicle and determined that an impound was necessary. (Doc. 31 at 3). Moreover, it argues that conducting an inventory of a vehicle is standard procedure. *Id.*

Thus, although there was no search warrant, the search conducted in this case as an inventory is reasonable and does not offend Fourth Amendment principles. *Id.*

Police officers may impound vehicles to further "public safety" or "community caretaking functions," such as removing "disabled or damaged vehicles," and "automobiles which violate parking ordinances, and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic." *United States v. McKinnon*, 681 F.3d 203, 208 (5th Cir. 2012) (quoting *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976)). In determining whether the impoundment of a vehicle was proper, the court focuses on "the reasonableness of the 'community caretaker' impound viewed in the context of the facts and circumstances encountered by the officer." *Id.* at 208. The inquiry on the reasonableness of the vehicle impoundment for a community caretaking purpose is without reference to any standardized criteria. *Id.* (citations omitted). However, the reasonableness of law enforcement's decision to impound a vehicle for "community caretaking" can turn on whether police officers followed applicable local procedures established for impounding vehicles. *United States v. Haynes*, 3:17-CR-49-L, 2017 WL 3601386, at *7 (N.D. Tex. Aug. 22, 2017) (citing *United States v. Ponce*, 8 F.3d 989, 995–96 (5th Cir. 1993)). "Public caretaking typically applies when the owner of the vehicle has been arrested while the vehicle is on the public streets. In that situation, the public caretaking exception to the warrant requirement allows police to impound the vehicle to protect the vehicle, its contents, and the surrounding roadways." *Trent v. Wade*, 776 F.3d 368, 387 n.13 (5th Cir. 2015).

Here, the Dodge pick-up was in the drive-thru lane of a convenience store when Defendant and his only passenger were arrested. Sergeant Sanchez explained that it is policy, in order to protect the contents of the vehicle and the officers from future accusations of theft, to

impound and inventory a vehicle when a person is arrested. Moreover, the Court inquired and Sergeant Sanchez affirmed, that Defendant had no friend or relative available to take care of the Dodge pick-up. Under these circumstances, the Court finds that taking custody of the vehicle operated by Defendant at the time of the stop and arrest was a "legitimate exercise of the arresting officer's community caretaking function." *United States v. Staller*, 616 F.2d 1284, 1290 (5th Cir. 1980) (validating a protective inventory of a vehicle and acknowledging that despite being lawfully parked and presenting no apparent hazard to public safety, taking custody of a vehicle was a legitimate exercise of the officer's community caretaking functions because the police was aware that a car parked overnight in a mall parking lot runs a significant risk of vandalism or theft). Consequently, the search of the Defendant's vehicle was a valid protective inventory of a vehicle lawfully within police custody. *Id.*

Nevertheless, assuming for the sake of argument that the inventory of the pick-up was unreasonable, the Court is persuaded by the Government's second and third arguments detailed below.

2. *Probable Cause to Search*

The Government additionally argues that law enforcement officers had probable cause to search the vehicle because ECSO SIU officers and DEA agents personally observed a narcotics transaction between the CI and Defendant immediately before arresting and searching him. (Doc. 31 at 4). Consequently, the officers had first-hand knowledge that the fruits and instrumentalities of narcotics trafficking—the "buy money," drug paraphernalia, cellular phone, and additional narcotics—were present in the vehicle. *Id.*

"If there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v. Ross*, 456 U.S. 798, 820–821 (1982) authorizes a search of any area of the vehicle in which the evidence might be found." *Arizona v. Gant*, 556 U.S. 332, 347 (2009).

In the instant case the officers "had reason to believe that evidence relevant to an illegal narcotics transaction was in the vehicle." The officers' surveillance established interaction between the CI and Defendant. When the officers met with the CI after his interaction with Defendant, the CI turned over the methamphetamine purchased from Defendant (purchased with the marked "buy money"). The officers surveilled the Dodge pick-up immediately before, during, and after the narcotics transaction. Moreover, they searched the CI before and after the controlled purchase to secure the integrity of the operation. Based on the totality of the circumstances, the officers had probable cause to believe that evidence related to criminal activity was in the Dodge pick-up driven by Defendant. *United States v. Guerra*, 605 F. App'x 295, 297–98 (5th Cir. 2015) (holding officers had reason to believe that evidence relevant to a narcotics transaction was in the vehicle, as would support a warrantless search of the vehicle because surveillance had established an interaction between a passenger in defendant's car and two individuals suspected of dealing narcotics, and police had continued monitoring on the vehicle).

3. *Search Incident to Arrest*

Along the same line, the Government contends that law enforcement officers had probable cause to believe evidence of the narcotics transaction, which gave rise to Defendant's arrest, was present in the vehicle. (Doc. 31 at 5). Accordingly, even if they had not impounded the Dodge pick-up, they were authorized to search it. *Id.*

"When a police officer has made a lawful arrest of the occupant of an automobile, he may, under certain circumstances, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile." *United States v. Guerra*, 605 F. App'x 295, 297 (5th Cir. 2015) (citation omitted). "Police may search only the space within the arrestee's immediate control; a search of a vehicle incident to a warrantless arrest may not be made if the arrestee has been secured and cannot access the interior of the vehicle." *Id.* Officers may, however, search when "it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Id.* (citations omitted).

As explained in the "Probable Cause to Search" section of this Order, the Court opines that the officers had reason to believe that the "buy money," cellular phone, additional narcotics, and drug paraphernalia, which are relevant to the offense giving rise to Defendant's arrest, might be found in the vehicle. *Id.* Consequently, because the search was incident to arrest, the officers did not violate the Defendant's Fourth Amendment rights when they searched the vehicle.

* * *

In summary, the Court first concludes that law enforcement officers had reasonable suspicion to stop the Dodge pick-up driven by Defendant to arrest him based on the active warrant and the officers' observation of the narcotics transaction between Defendant and the CI. Second, the Court concludes that the search of the Dodge pick-up falls within the inventory exception to warrantless searches. However, even if the inventory exception is inapplicable, the Court concludes that the search of the Dodge pick-up was constitutional because the officers had probable cause to believe the vehicle contained evidence of criminal activity. Moreover, the Court opines the search was incident to Defendant's arrest and that it was reasonable to believe evidence related to the narcotics transaction, the crime of arrest, might be found in the vehicle.

V. CONCLUSION

Based on the foregoing, the Court **DENIES** Defendant's Motion to Suppress. (Doc. 26).

It is so **ORDERED**.

SIGNED this 25th day of June, 2019.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE